



[6450-01-P]

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CR-003]

Decision and Order Granting a Waiver to Hussmann from the Department of Energy Commercial Refrigerator, Freezer and Refrigerator-Freezer Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. CR-003) that grants to Hussmann Corporation (Hussmann) a waiver from the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of its commercial freezers for the basic models set forth in its petition for waiver (petition). Hussmann claims in its petition that the specified basic models cannot be tested in accordance with the DOE test procedure for commercial refrigeration equipment because the equipment cannot operate at the specified integrated average product temperature of $0^{\circ}\text{F} \pm 2^{\circ}\text{F}$. Under today's decision and order, Hussmann shall be required to test and rate the commercial freezers specified in the petition at their lowest integrated average temperature of $8 \pm 2^{\circ}\text{F}$, which DOE confirmed is the lowest temperature at which those models can operate and which is consistent with the lowest

application product temperature provision in the DOE test procedure.

DATES: This Decision and Order is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S.

Department of Energy, Building Technologies Program, Mail Stop EE-2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-0371. E-mail: Bryan.Berringer@ee.doe.gov.

Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC-71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0103. Telephone: (202) 287-6111. E-mail: <mailto:Jennifer.Tiedeman@hq.doe.gov>.

SUPPLEMENTARY INFORMATION: DOE issues notice of this Decision and Order in accordance with Title 10 of the Code of Federal Regulations (10 CFR) 431.401(f)(4). In this Decision and Order, DOE grants Hussmann a waiver for the commercial refrigerators specified in its petition submitted on January 12, 2012. Hussmann must test and rate this equipment at the lowest integrated average temperature at which the commercial refrigerators can operate, which is consistent with the lowest application product temperature provision in the DOE test procedure at 10 C.F.R. 431.64(b)(3)(A).

Today's decision requires Hussmann to make representations concerning the energy efficiency of this equipment consistent with the provisions and restrictions of the alternate test procedure in the Decision and Order below, and the representations must fairly disclose the test results. (42 U.S.C. 6314(d)) The same standard applies to distributors, retailers, and private labelers when making representations of the energy efficiency of this equipment.

Issued in Washington, DC, on November 25, 2013.

Kathleen B. Hogan
Deputy Assistant Secretary for Energy Efficiency
Energy Efficiency and Renewable Energy

Decision and Order

In the Matter of: Hussmann Corporation (Hussmann) (Case No. CR-003).

I. *Background and Authority*

Title III, Part C of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94-163 (42 U.S.C. 6311-6317), established the Energy Conservation Program for certain industrial equipment, which includes commercial refrigeration equipment, the focus of this notice.¹ Part C specifically includes definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers. (42 U.S.C. 6316) With respect to test procedures, Part C authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

Section 343(a)(6)(C) of EPCA directs DOE to develop test procedures to establish the appropriate rating temperatures for products for which standards will be established under section 343(a)(6), including (1) ice-cream freezers; (2) commercial refrigerators, freezers, and refrigerator-freezers with a self-contained condensing unit without doors; and (3) commercial refrigerators, freezers, and refrigerator-freezers with a remote condensing unit. Other provisions of section 343(a)(6) provide DOE with additional

¹ For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A-1.

authority to establish and amend test procedures for commercial refrigeration equipment. (42 U.S.C. 6314(a)(6)(C)) On December 8, 2006, DOE published a final rule adopting test procedures for commercial refrigeration equipment. 71 FR 71340. Title 10 of the Code of Federal Regulations (10 CFR) 431.64 directs manufacturers of commercial refrigerators, freezers and refrigerator-freezers to use certain sections of Air-Conditioning and Refrigeration Institute (ARI) Standard 1200–2006, ‘‘Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets’’ when measuring the energy consumption of this equipment. On January 9, 2009, DOE established energy conservation standards for certain classes of commercial refrigerators, effective January 1, 2012, and provided that the test procedures at 10 CFR 431.64 apply to that equipment. 74 FR 1092, 96. The basic models included in Hussmann’s petition are subject to the applicable standards established in that rulemaking and are therefore required to be tested and rated according to the prescribed DOE test procedure as of January 1, 2012.

DOE’s regulations for covered products and equipment permit a person to seek a waiver from the test procedure requirements for covered commercial equipment if at least one of the following conditions is met: (1) the petitioner’s basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures; or (2) the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. The Assistant Secretary for

Energy Efficiency and Renewable Energy (Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain in effect according to the provisions of 10 CFR 431.401(g).

II. *Husmann's Petition for Waiver: Assertions and Determinations*

On January 12, 2012, Husmann submitted a petition for waiver from the DOE test procedure applicable to commercial refrigerators, freezers and refrigerator-freezers set forth in 10 CFR 431.64. Husmann requested the waiver for its commercial refrigerators intended for short term display of frozen meat (separate from a frozen food case). This equipment is classified as a commercial freezer with a remote condensing unit designed for low temperature applications (category (ix)) in the table listing some of the applicable test procedure requirements at 10 CFR 431.64(b)(3)). The applicable test procedure for this equipment is specified in 10 CFR 431.64(b), which incorporates by reference ARI Standard 1200-2006, section 3, "Definitions," section 4, "Test Requirements," section 7, "Symbols and Subscripts," and, section 5, "Rating Requirements for Remote Commercial Refrigerated Display Merchandisers and Storage Cabinets."

Husmann sought a waiver from the applicable test procedure under 10 CFR 431.64 on the grounds that its commercial refrigerators contain design characteristics that

prevent testing according to the current DOE test procedure. Specifically, Hussmann asserts that particular basic models are not able to operate at the specified integrated average temperature of 0°F, which is required for testing and rating purposes. Instead, Hussmann asserts that the equipment can only operate from 8-18°F. Consequently, Hussmann requested that DOE grant a waiver from the applicable test procedure, allowing the specified products to be tested at an integrated average temperature of 12°F, which Hussmann asserts is an acceptable temperature at which to test the specified basic models.

The Department articulated its position regarding basic models of commercial refrigeration equipment that are not capable of operating at the required integrated average temperature specified by the DOE test procedure in a test procedure final rule published on February 21, 2012. 77 FR 10292. Specifically, to qualify to use the lowest application product temperature for a certain piece of equipment, a manufacturer should be confident that any case tested under that equipment rating could achieve the specified lowest application product temperature within +/- 2°F and could not be tested at the rating temperature (i.e., integrated average temperature specified by the DOE test procedure) for the given equipment class. Further, in the final rule, DOE clarified that, for many pieces of equipment, the lowest application product temperature that should be used for testing will be the lowest temperature setting on the unit's thermostat. 77 FR 10292, 10303 (February 21, 2012).

DOE agrees with Hussmann's assertion that the basic models identified in its

petition cannot be operated at the associated rating conditions currently specified for commercial freezers in the DOE test procedures given the available data. DOE has confirmed with Hussmann that the lowest temperature these basic models are capable of operating would be 8°F. In light of this and DOE's position in the February 2012 final rule, DOE has concluded that Hussmann's request to test these basic models of commercial freezers at an integrated average temperature of 12°F is inappropriate. Instead, DOE has determined that the basic models of commercial freezers listed in Hussmann's petition should be tested at their lowest application product temperature as defined at 10 CFR 431.62, which corresponds to an integrated average temperature of 8°F.

DOE notes that use of the amended test procedure set forth in the aforementioned final rule will be required on the compliance date of any amended standards for this equipment. (77 FR 10292, February 21, 2012)

III. *Conclusion*

After careful consideration of all the material that was submitted by Hussmann, it is ordered that:

(1) The petition for waiver submitted by the Hussmann (Case No. CR-003) is hereby granted as set forth in paragraphs (2), (3), (4) and (5).

(2) Hussmann shall be required to test and rate the following basic models according to the alternate test procedure set forth in paragraph (3) of this section. M1XL-4GE, M1XL-6GE, M1XL-8GE, M1XL-12GE, M1XLD-4GE, M1XLD-6GE, M1XLD-8GE, M1XLD-12GE

(3) Alternate Test Procedure. Hussmann shall test the equipment listed in paragraph (2) per the DOE test procedure set forth in 10 CFR 431.64, except that instead of testing at $0^{\circ}\text{F} \pm 2^{\circ}\text{F}$ (as set forth in the table at 10 CFR 431.64(b)(3)), DOE requires Hussmann to test and rate the commercial freezers specified in its January 12, 2012 petition and listed above at their lowest integrated average temperature of $-8 \pm 2^{\circ}\text{F}$, which DOE confirmed is the lowest temperature at which those models can operate and which is consistent with the lowest application product temperature provision in the DOE test procedure.

DOE notes that it has published an amended test procedure for commercial refrigeration equipment. (77 FR 10292, Feb. 21, 2012). The amended test procedure addresses the testing issue addressed in this waiver, requiring products to be tested at their lowest application product temperature. *Id.* Use of the amended test procedure will be required on the compliance date of any amended standards for this equipment.

(4) Representations. In making representations about the energy efficiency of its refrigerated display merchandisers listed in paragraph (2), for compliance, marketing, or other purposes, Hussmann must fairly disclose the results of testing under the alternate

test procedure specified in this waiver.

(5) This waiver amendment shall remain in effect from the date this Decision and Order is issued, consistent with the provisions of 10 CFR 431.401(g). DOE notes that it has published an amended test procedure for commercial refrigeration equipment. (77 FR 10292, Feb. 21, 2012). The amended test procedure addresses the testing issue addressed in this waiver, requiring products to be tested at their lowest application product temperature. *Id.* Use of the amended test procedure will be required on the compliance date of any amended standards for this equipment.

(6) This waiver is granted for only those models specifically set out in Hussmann's petition, not future models that may be manufactured by Hussmann. Hussmann may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional models for which it seeks a waiver from the DOE test procedure. Grant of this waiver also does not release Hussmann from the certification requirements set forth at 10 CFR part 431.

(7) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on November 25, 2013.

Kathleen B. Hogan
Deputy Assistant Secretary for Energy Efficiency
Energy Efficiency and Renewable Energy

[FR Doc. 2013-28772 Filed 11/29/2013 at 8:45 am; Publication Date: 12/02/2013]